IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8528 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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D.R. PATEL

Versus

GUJARAT WATER RESOURCES AND SEWERAGE BOARD

Appearance:

1. Special Civil Application No. 8528 of 2002

MR IS SUPEHIA for Petitioner No. 1

..... for Respondent No. 1-2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 26/08/2002

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, who was a Deputy Accountant with the respondent- Gujarat Water Supply and Sewerage Board, a statutory Board established under the provisions

of Gujarat Water Supply and Sewerage Act, 1978, has challenged the order dated 12-2-2002 passed by the disciplinary authority removing the petitioner from service, as confirmed by the appellate order dated 10-6-2002 passed by the Chairman of the respondent-Board.

2. The petitioner was served with a chargesheet dated 24-4-1996 alleging mainly that the money received by the petitioner from the contractors and the subordinate offices in cash were accepted by the petitioner but they were not entered in the duplicate receipts nor were they entered in the cash books and that the petitioner had committed misappropriation of those amounts. In the departmental inquiry, the petitioner did not dispute the fact that he had received the amounts in cash nor did he dispute the fact that the amounts were not entered in the duplicate receipts or in the cash books. The only explanation offered by the petitioner was that the amounts were utilised for other administrative expenses like paying for petrol, diesel, TA bills etc. under the instructions of the Executive Engineer. The petitioner's defence was that nothing was done regarding this matter for about 4 years although the facts were known to the officers but when this irregularity was detected, in order to save his own skin, the superior officer had brought pressure on the petitioner and, therefore, the petitioner had to deposit the amount in order to save his job but the petitioner had not committed any misappropriation.

In view of the aforesaid stand of the petitioner, the Inquiry Officer held that the charge levelled against the petitioner was proved but the petitioner had offered an explanation whereby the responsibility was sought to be thrown on the controlling officer but the petitioner had not produced any evidence in support of his defence. Hence the explanation offered by the petitioner appeared to be a got up one which cannot be accepted. The Inquiry Officer, therefore, concluded in his inquiry report dated 28-6-1999 at Annexure "B" that the charges levelled against the petitioner were proved. A copy of the inquiry report was sent to the petitioner and the petitioner submitted his reply dated 23-8-2001 merely reiterating that the Controlling Officer should have been held responsible as all such transactions in the Board office are done by the employees and officers under instructions and consultation of each other and that monetary transactions are not done in the absence of the Controlling Officer. The disciplinary authority passed the impugned order dated 12-2-2002 (Annexure E) holding that the charges levelled against the petitioner were

proved and the order of removal from service was passed. The petitioner was required to pay the sum of Rs.33,311/which was misappropriated and the same was ordered to be adjusted against the dues payable to the petitioner.

The petitioner went in appeal before the Chairman of the respondent-Board. However, by communication dated 10-6-2002 (Annexure F), the petitioner was informed that the petitioner's appeal was dismissed. It is against the orders of the disciplinary authority and the appellate authority that the petitioner has filed the present petition.

3. Mr Supehia, learned counsel for the petitioner has raised the following contentions:-

(i) The appellate order is illegal as the same does not contain any reasons.

(ii) No full-fledged inquiry was conducted against the petitioner and, therefore, there was violation of Rule 9(3) of the Discipline & Appeal Rules. There was also violation of the provisions of Rule 10(4) as the disciplinary authority has not recorded findings on all or any of the articles of charge.

(iii) There was violation of Rule 9(17) as the Inquiry Officer did not question the petitioner generally on the circumstances appearing against him in the evidence for the purpose of enabling the petitioner to explain such evidence.

(iv) A copy of the inquiry report was not sent by the disciplinary authority but it was sent by the Inquiry Officer.

4. As far as the first challenge is concerned, the learned counsel has submitted that although the petitioner had raised various grounds in the memo of appeal, the appellate authority neither gave the petitioner a personal hearing nor gave reasons for rejecting the appeal. Strong reliance is placed on the decisions of the Apex Court in AIR 2001 SC 1767 and AIR 1986 SC 1173.

5. As regards the requirement to give reasons, as per the settled legal position, in the absence of any such requirement in the statute or the rules, there is no duty cast on an appellate authority to give reasons where

the order is one of affirmance. This is so laid down even in Ram Chander vs. Union of India AIR 1986 SC 1173 relied upon by the petitioner.

The learned counsel, however, submits that in absence of reasons it would not be possible to know as to whether the grounds urged in the appeal memo were considered by the appellate authority. A perusal of the grounds in the appeal memo indicates that the petitioner had not raised any specific ground which could be said to be arguable and which could persuade this Court to set aside the order of the appellate authority and remand the matter for fresh hearing and decision. For instance, three of the grounds in the appeal memo pertain to the quantum of penalty. It is contended that no reason has been given in the order of removal as to why the maximum penalty of removal from the service was called for in the present case. Further, another ground was that the order of removal can be passed in case of corruption, misappropriation, grave misconduct involving moral turpitude but none of those factors exist in the present case. Still another ground urged was that the penalty is excessive, disproportionate and harsh and is vitiated by non-application of mind.

In the facts of the present case, when the Inquiry Officer as well as the disciplinary authority have found that the petitioner has misappropriated cash received from the contractors and the subordinate offices and not accounted for the same, the petitioner had committed misappropriation which could not have warranted any penalty lower than that of removal. Under the circumstances, the appellate order cannot be faulted for not giving reasons for rejecting contentions which did not merit any consideration at all.

6. As regards the other grounds in the memo of appeal, the same were also independently raised at the hearing of this petition and, therefore, the same are also dealt with ad-seriatim.

7. The next challenge to the order of removal is that no full-fledged inquiry was held as contemplated by Rule 9(13) of the rules. Now, it is true that ordinarily an employer would be required to lead evidence through witnesses and documents for proving charge against the delinquent. In the facts of the instant case, however, the petitioner did not dispute that he had received cash amounts from the contractors and subordinate offices. The petitioner also did not dispute the fact that those amounts were not accounted for in the cash book. The

petitioner had merely sought to explain away this conduct by stating that the amounts he received in cash were utilised for other office administrative expenses like paying for petrol, diesel, TA bills etc.. Thus, the petitioner was pleading facts which were within his knowledge and, therefore, it was for the petitioner to lead necessary evidence in this behalf. Even if for the sake of argument, the petitioner's case were to be believed, it was not a matter of a few days that the petitioner received cash from contractors and used the same for administrative expenses. The inquiry was held four years after the cash amounts were received and, therefore, even if, proceeding on the petitioner's defence that the amounts received in cash from contractors and subordinate offices were utilised for other administrative expenses, at least the bills for paying petrol, diesel, TA bills etc. would have been ready long back and the said amounts sanctioned for those bills would have been available in cash and which could have been entered into the cash book. The very fact that this was not done for a period of 4 years leaves no room for doubt that there was misappropriation. The petitioner not having disputed the receipt of cash amounts, it was for the petitioner to prove that the amounts were used for the administrative expenses. Under the circumstances, the burden of proof was on the petitioner and the Board could not be expected to discharge this onus.

8. As regards the contention that the disciplinary authority had not recorded finding on each and every article of charge, the thrust of the charges was that the petitioner had received the amounts in cash and not accounted the same in the cash book. The Inquiry Officer as well as the disciplinary authority held that the said charge levelled against the petitioner was proved. Under the circumstances, merely because the charge was divided into four subheads, the disciplinary authority not having given a finding on each individual subhead cannot vitiate the final order of penalty.

9. As regards the contention that there was violation of sub-rule (17) of Rule 9, no such ground was urged in the memo of appeal before the appellate authority and, therefore, it is not possible to believe that the Inquiry Officer had not questioned the petitioner on the circumstances appearing against the petitioner. In any view of the matter, when it was the petitioner's own defence that he had received the amounts in cash and that the same were used for other administrative purposes, it was for the petitioner to

prove those facts and, therefore, the so-called breach of the provisions of Rule 9(17) cannot come to the petitioner's rescue.

10. As regards the contention that the Inquiry Officer's report was not sent by the disciplinary authority but by the Inquiry Officer along with the letter dated 16-8-2001 (Annexure C), it is true that ordinarily it is for the disciplinary authority to send the Inquiry Officer's report to the delinquent with an observation that the disciplinary authority tentatively agrees with the report of the Inquiry Officer and the delinquent has to show cause why the disciplinary authority should not accept the Inquiry Officer's report. In case the disciplinary authority were to differ from the Inquiry Officer then the delinquent would be entitled to be told as to on what grounds the disciplinary authority proposes to disagree with the Inquiry Officer. However, in the facts of the instant case, the Inquiry Officer had admittedly found the petitioner guilty of charges levelled against him, the disciplinary authority had not disagreed with the same and the petitioner dealt with the report in his reply dated 23-8-2001 (Annexure D) and the disciplinary authority considered the same in the impugned order (Annexure E preamble item No.8), the petitioner did have a fair and reasonable opportunity of defending himself. Merely because the Inquiry Officer's report was sent along with the Inquiry Officer's letter, that by itself would not vitiate the final order of the disciplinary authority holding the petitioner guilty of the charges levelled against him and imposing the penalty of removal, when the petitioner had been given a fair and reasonable opportunity of defending himself.

As per the settled legal position (vide State Bank of Patiala vs. SK Sharma AIR 1996 SC 1669) even if it were to be held that there is a breach of a procedural rule, that by itself would not vitiate inquiry unless the delinquent is able to show any prejudice on account of the breach. No such prejudice is pointed out in the facts of the instant case.

11. In view of the above discussion, there is no merit in any of the contentions and, therefore, the petition is summarily dismissed.

(M.S. Shah,J)

zgs/-